

# TRANSMITTAL

## HBSA II

HARRY BAKER SMITH ARCHITECTS II  
A PROFESSIONAL L.L.C.

PROJECT: 1031 Canal Street

ARCHITECT'S PROJECT NO.: 0827

PERMIT NUMBER: 13-43016-NEWC

DATE: May 1, 2014

TO: Anouar Ait Iddir

### WE TRANSMIT:

Herewith ☒ Under Separate Cover VIA: ☐ UPS ☐ BY HAND ☐ MAIL ☒ OTHER: email AAitiddir@nola.gov

### FOR YOUR:

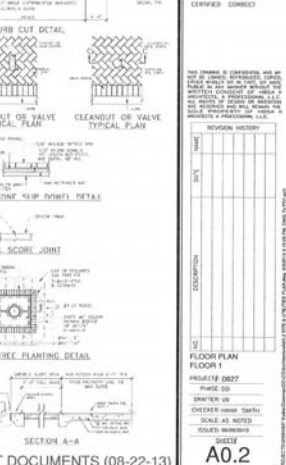
<input type="checkbox"/> Approval	<input type="checkbox"/> Drawings
<input type="checkbox"/> Review	<input type="checkbox"/> Specifications
<input type="checkbox"/> Use	<input type="checkbox"/> Change Orders
<input type="checkbox"/> Information	<input type="checkbox"/> Shop Drawings
<input checked="" type="checkbox"/> Other:	<input checked="" type="checkbox"/> Other:

Qty	Brief Description	Code
	Dept. of Public Works Curb Cut Approval	
	Dept. of Property Management Ordinance granting servitude	

ACTION CODES: A – Action indicated on item transmitted; B – No action required; C – Sign and return to this office; D – See Remarks

By: Harry Baker Smith Architects II PLLC  
chris.schmidt@hbsaii.com

189 Maple Ridge Drive  
Metairie, Louisiana 70001  
504.885.4477 - FAX: 504.885.4377  
central@hbsaii.com



FINAL DEVELOPMENT DOCUMENTS (08-22-13)

ORDINANCE

CITY OF NEW ORLEANS

CITY HALL: March 13, 2014

NO. 025758 MAYOR COUNCIL SERIES

CALENDAR NO. 30,005

BY: COUNCILMEMBER GISLESON PALMER (BY REQUEST)

AN ORDINANCE to authorize the Mayor of the City of New Orleans to enter into a servitude agreement with 1031 Canal, L.L.C., and 1615 E. Judge Perez, L.L.C., pertaining to improvements located upon public property designated as proposed encroachments of canopies and aluminum sunshades, on/over portions of Canal St., N. Rampart St., and Iberville St.; approximately measuring 2,841 square feet in total fronting on Canal St., N. Rampart St., and Iberville St.; all measurements being more or less and subject to survey; the air and ground space being adjacent and relating to Square 95, Lot A-1, 2nd Municipal District, bounded by N. Rampart St., Iberville St., Burgundy St., and Canal St.; the improvements bearing the municipal address of **1031 Canal St.**; to declare that such use as granted in the servitude agreement will incorporate space that is not needed for public purposes nor interfere with the use of the public right-of-way; to set forth the reasons for said servitude agreement; to fix the minimum price and terms of said servitude agreement; and otherwise to provide with respect thereto.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, That the following described air and ground rights of portions of the rights-of-way on/over Canal St., N. Rampart St., and Iberville St. are not needed for public purposes at this time:

LEGAL DESCRIPTION

6 The proposed encroachments of canopies and aluminum sunshades, on/over Canal St.,  
7 N. Rampart St., and Iberville St.; approximately measuring 2,841 square feet in total,  
8 all measurements being more or less and subject to survey; the air and ground space  
9 being adjacent and relating to Square 95, Lot A-1, 2nd Municipal District, bounded  
10 by N. Rampart St., Iberville St., Burgundy St., and Canal St.; the improvements  
11 bearing the municipal address of **1031 Canal Street**.

1 **SECTION 2.** That the servitude agreement be undertaken for the following reasons:

- 2 (a) 1031 Canal, L.L.C. and 1615 E. Judge Perez, L.L.C., which own the  
3 improvements adjacent to the City-owned property, have constructed or are  
4 planning to construct encroachments of canopies and aluminum sunshades, after  
5 applying for and obtaining a building permit, to the extent necessary, from the  
6 City of New Orleans;
- 7 (b) Said improvements and constructions referred to in subsection (a) hereinabove are  
8 dependent upon the servitude agreement with 1031 Canal, L.L.C. and 1615 E.  
9 Judge Perez, L.L.C.; the plans and specifications submitted by 1031 Canal, L.L.C.  
10 and 1615 E. Judge Perez, L.L.C. to obtain the building permit for the  
11 improvements described herein, accurately delineate the improvements and  
12 constructions which are subject to the servitude agreement, and said plans and  
13 specifications were inspected and approved by the City of New Orleans prior to  
14 the issuance by the City of a building permit allowing the improvements to be  
15 constructed as shown therein; the disposition of air and ground rights by the  
16 servitude agreement as authorized herein will not hinder or preempt the use by the  
17 public or the City of any other public property and will provide revenues to the  
18 City otherwise not attainable if the air and ground rights were unused.

1        **SECTION 3.** That the Mayor is hereby authorized to execute the servitude agreement  
2 attached hereto as Exhibit "A" and as described in SECTION 1 hereinabove with 1031 Canal,  
3 L.L.C. and 1615 E. Judge Perez, L.L.C., for a minimum annual payment of twenty-one thousand  
4 three-hundred seven dollars and fifty cents (\$21,307.50).

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS APR 10 2014

**JACQUELYN B. CLARKSON**  
\_\_\_\_\_  
PRESIDENT OF THE COUNCIL

DELIVERED TO THE MAYOR ON APR 14 2014

APPROVED:  APR 16 2014

**MITCHELL J. LANDRIEU**

\_\_\_\_\_  
MAYOR

RETURNED BY THE MAYOR ON APR 17 2014 AT -9 40 AM

**LORA W. JOHNSON**

\_\_\_\_\_  
CLERK OF COUNCIL

**ROLL CALL VOTE:**

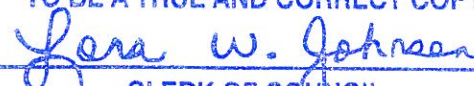
**YEAS:**        Cantrell, Clarkson, Gisleson Palmer, Gray, Guidry, Head, Hedge-Morrell - 7

**NAYS:**        0

**ABSENT:**     0

**RECUSED:** 0

THE FOREGOING IS CERTIFIED  
TO BE A TRUE AND CORRECT COPY

  
\_\_\_\_\_  
CLERK OF COUNCIL

**GRANT OF SERVITUDE**

**BY**

**THE CITY OF NEW ORLEANS**

**TO**

**1031 CANAL, L.L.C.  
1615 E. JUDGE PEREZ, L.L.C.**

**UNITED STATES OF AMERICA**

**STATE OF LOUISIANA**

**PARISH OF ORLEANS**

**BEFORE ME**, a duly commissioned and qualified Notary Public, in and for the parish/county and state below referenced, and in the presence of the undersigned competent witnesses,

**PERSONALLY CAME AND APPEARED:**

- (1) **THE CITY OF NEW ORLEANS**, is herein represented by Mitchell J. Landrieu, its Mayor, by virtue of Ordinance No. \_\_\_\_\_ M.C.S., adopted on \_\_\_\_\_, 2013 (herein after referred to as "the City"); and,
- (2) **1031 CANAL, L.L.C.**, a Louisiana limited liability company, represented herein by \_\_\_\_\_, its \_\_\_\_\_, duly authorized to appear herein on its behalf;
- (3) **1615 E. JUDGE PEREZ, L.L.C.**, a Louisiana limited liability company, represented herein by \_\_\_\_\_, its \_\_\_\_\_, duly authorized to appear herein on its behalf (1031 Canal and 1615 E. Judge Perez referred to as "Grantee");

## WHO DECLARED THAT:

The City hereby grants Grantee a predial servitude of right-of-use to Grantee as described herein:

*Air rights for the proposed encroachments of canopies and aluminum sunshades over the Canal St., N. Rampart St., and Iberville St. public rights-of-way adjacent to Lot A-1 (formerly lots A, B, C, D, E, F, G, H, 2, 2, and three undesignated lots), Square 95, 2<sup>nd</sup> Municipal District, the improvements bearing the municipal address 1031 Canal Street.*

### **I. CERTAIN DEFINITIONS**

The following terms have the meanings given to them in this Section 1:

- (a) **Right-of-way:** City owned property adjacent to the dominant estate, of which the servitude exists upon a portion.
- (b) **Property:** The dominant estate, made up of the immovable, adjacent to the right-of-way and which has improvements that encroach onto the right-of-way.
- (c) **Grantee:** The owner of the dominant estate.
- (d) **Encroachment:** the portion of the property that occupies the right-of-way, as shown in Exhibit "A."
- (e) **Servitude:** The predial servitude pursuant to La. C.C. Art. 646, consisting of the right to use the airspace and correlated ground for an encroachment on the right-of-way as shown on Exhibit "A," and consisting of:

*Approximately 2,841 square feet of air rights consisting of canopies and aluminum sunshades over the Canal St., N. Rampart St., and Iberville St. public rights-of-way, the encroachments being part of the improvements located in the 2<sup>nd</sup> Municipal District, Lot A-1 (formerly Lots A, B, C, D, E, F, G, H, 2, 2, and three undesignated lots), Square 95, bounded by N. Rampart St., Iberville St., Burgundy St., and Canal St., bearing the municipal address 1031 Canal Street, New Orleans.*



## **II. SERVITUDE AND CONSENT**

**(a) Consent of City:** As permitted in La. C.C. Art. 646, City does hereby consent to the exercise by Grantee of all the following rights:

- (1) The exclusive right to erect and own the encroachment burdening the right-of-way according to the attached exhibit "A."
- (2) Right to install, maintain, and repair the encroachment burdening the right-of-way according to the attached exhibit "A."

## **III. LIMITATIONS IN GENERAL**

The grant of the servitude and accessory rights by City and the exercise thereof by Grantee shall be subject and subordinate to the public use of the right of way, governmental laws and regulations, compliance with all of the rights reserved herein by City, and the terms of this agreement.

**(a) Limitations on Right of Use:** Exercise of the Servitude granted in Section I shall be subject to the following limitations:

- (1) Grantee's right of use shall be subject to the public's use of the right-of-way.
- (2) Grantee shall perform all work in a safe and reasonably expeditious manner at its expense, shall restore the premises of City and any third party to the same condition as existed prior to commencement of any work by Grantee, and shall be responsible for any damage caused to the right-of-way or any third parties resulting from any work by Grantee;
- (3) Any right of use shall be exercisable only to the extent that such rights are reserved to Grantor pursuant to this servitude agreement and subject to any limitations or requirements imposed thereby.
- (4) If the Servitude may not be exercised due to City's use of the right-of-way for public purpose, Grantee assumes all costs associated with repair, replacement, or demolition of said encroachment.



#### **IV. CONSIDERATION**

- (a) **Initial Payments:** In consideration of this Servitude, Grantee shall pay to City the sum of \$21,157.50 and shall record this Servitude Agreement in the Notarial Archives and the Conveyances Office.
- (b) **Annual Payments:** In further additional consideration of this agreement, Grantee shall pay to City the sum of \$21,307.50 per year, commencing on November 1, 2014 and continuing thereafter until such time as the Servitude is terminated. The foregoing annual payment shall be subject to upward adjustment of 10% following the expiration of every fifth year after November 1, 2013.

#### **V. TERM**

Except as set forth below, the Servitude and Consent shall be perpetual.

- (a) **Termination:** Notwithstanding the foregoing, the Servitude and Consent shall terminate if:

- (1) The building and/or encroachment is demolished, substantially damaged, destroyed, or removed and not reconstructed or replaced within one (1) year after such destruction or damage;
- (2) The encroachment is taken or removed for public purposes in whole or in such part that it is not fit for its intended purposes;
- (3) Grantee is found to be in default of any of its obligations hereunder.

(b) **Results of termination:** Upon termination of the servitude, there shall be no right or obligation to reconstruct the Encroachment, unless such right or obligation is established by law.

#### **VI. INDEMNITY AND INSURANCE**

(a) At all times during the term of this Servitude, Grantee shall and does hereby agree to hold harmless and indemnify the City from and against any and all claims of Grantee or of any third persons for injuries to persons, including death, or damages to property, occurring on the right-of-way and arising from Grantee's use or occupancy of the encroachment, including the defense of all actions brought against the City for such damages, arising from the negligent acts or omissions of the Grantee, its employees, guests, invitees, agents or independent contractors.

(b) If a judgment is rendered thereon against Grantee, in a claim of a third party arising solely and exclusively from an act or omission by the City, its employees, guests, invitees, agents or independent contractors, the City agrees to pay the same to the extent of its comparative fault, to Grantee's complete satisfaction and discharge; provided, however, that the Grantee shall give the City prompt written notice of the existence of any such claims and of any proceedings taken against the Grantee thereon, so that such claims may be investigated and such proceedings may be contested by City.

(c) Grantee reserves the right and option to settle, compromise, and/or pay, any adjudicated claim by a third party for damages resulting from injuries to persons, including death, or damages to property, directly to said claimant, in place and stead of indemnifying the City; but if, and only if, Grantee obtains a valid and lawful complete release, satisfaction and discharge from the claimant in favor of the City.

(d) Grantee shall furnish and maintain in effect during the Term of this Servitude, an insurance policy or policies with the limits of not less than \$1,000,000/\$5,000,000 covering general commercial liability, in which policy or policies the City shall either be carried as an additional named insured or provision shall be made to insure the liability of Grantee under the above indemnification and hold harmless agreement under the contractual coverage provisions of said insurance policy or policies. A copy of such policy or policies, or certificate of insurance with reference to same, shall be delivered to the City upon execution of this Servitude.

## **VII. ASSIGNMENT OR TRANSFER**

In the event that any of the building which the encroachment forms a part is sold by private or public sale, this Servitude shall be assigned or transferred without the prior consent of the City to the purchaser of said property. Any instrument assigning or transferring the Servitude be delivered to the City along with proof of insurance as required in Section V within thirty (30) days of the recordation of said assignment or transfer.

### **VIII. NOTICE**

All notices, demands, payments and requests by Grantee to City shall be deemed to have been properly given or made when received by the City if served personally on, or if sent by United States Postal Service, certified mail, return receipt requested, postage prepared addressed to the City as follows:

Department of Property Management,  
Division of Real Estate and Records  
1300 Perdido Street, Room 5W 06  
New Orleans, LA 70112

**THIS DONE AND PASSED**, on this \_\_\_\_ day of \_\_\_\_\_, 2013, in \_\_\_\_\_, Louisiana.

**GRANTEE: 1031 CANAL, L.L.C.**

WITNESS:

\_\_\_\_\_

BY: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

Permanent Mailing Address of Grantee:

\_\_\_\_\_

\_\_\_\_\_

**GRANTEE: 1615 E. JUDGE PEREZ,  
L.L.C.**

BY: \_\_\_\_\_

Permanent Mailing Address of Grantee:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
**NOTARY**

